

EXHIBIT 3

Transcript of Amirali Y. Haidri, Esquire

1 (1 to 4)

October 28, 2022

	1		3
1	UNITED STATES DISTRICT COURT	1	A P P E A R A N C E S
2	EASTERN DISTRICT OF MICHIGAN	2	ON BEHALF OF PLAINTIFF/COUNTER-DEFENDANT:
3	SOUTHERN DIVISION	3	STANLEY H. KREMEN, ESQUIRE
4	----- x	4	SHK-DPLC
5	TRUTEK CORP.,	5	4 Lenape Lane
6	Plaintiff/Counter-Defendant, :	6	East Brunswick, New Jersey 08816
7	v. : Case No.	7	(732) 593-7294
8	BLUEWILLOW BIOLOGICS, INC., : 2:21-cv-10312	8	shk@shk-dplc.com
9	Defendant/Counter-Plaintiff, :	9	
10	ROBIN ROE 1 through 10 :	10	ON BEHALF OF DEFENDANT/COUNTER-PLAINTIFF:
11	(fictitious names); ABC :	11	LIANE M. PETERSON, ESQUIRE
12	CORPORATION 1 through 10 :	12	FOLEY & LARDNER LLP
13	(fictitious names), :	13	3000 K Street, NW
14	Defendants. :	14	Suite 600
15	----- x	15	Washington, DC 20007
16		16	(202) 672-5300
17	Videotaped Deposition of	17	lpeterson@foley.com
18	AMIRALI Y. HAIDRI, ESQUIRE	18	
19	Conducted Virtually	19	
20	Friday, October 28, 2022	20	ALSO PRESENT:
21	10:08 a.m. EDT	21	JOHN PARKMAN, Video Specialist
22		22	JENNIFER POSIS, A/V Technician
23	Job No.: 468441	23	ASHOK WAHI
24	Pages 1 - 96	24	
25	Reported by: Debra A. Whitehead	25	
	2		4
1	Videotaped Deposition of AMIRALI Y. HAIDRI,	1	C O N T E N T S
2	ESQUIRE, conducted virtually.	2	EXAMINATION OF AMIRALI Y. HAIDRI, ESQUIRE PAGE
3		3	By Ms. Peterson 6
4		4	
5	Pursuant to notice, before Debra Ann Whitehead,	5	EXHIBITS MARKED IN TODAY'S SESSION
6	E-Notary Public in and for the State of Maryland.	6	(Attached to the Transcript)
7		7	DEPOSITION EXHIBIT PAGE
8		8	Exhibit 31 Deposition Notice 8
9		9	Exhibit 32 Curriculum Vitae, Amirali Y. 44
10		10	Haidri
11		11	Exhibit 33 Plaintiff's Expert Report of 67
12		12	Amirali Y. Haidri, Esq.,
13		13	Responsive to and in Rebuttal of
14		14	Defendant's Opening Expert Report
15		15	of Mansoor M. Amiji
16		16	Exhibit 34 Clinical Study Report, March 7, 86
17		17	2012
18		18	
19		19	EXHIBITS MARKED IN PRIOR SESSIONS
20		20	(Not Attached)
21		21	DEPOSITION EXHIBIT PAGE
22		22	Exhibit 2 U.S. Patent No. 8,163,802 56
23		23	
24		24	
25		25	

Transcript of Amirali Y. Haidri, Esquire

2 (5 to 8)

October 28, 2022

<p>1 P R O C E E D I N G S</p> <p>2 VIDEO SPECIALIST: Here begins Media</p> <p>3 Number 1 in the video-recorded deposition of</p> <p>4 Amiral Haidri in the matter of Trutek Corporation</p> <p>5 versus BlueWillow Biologics, Incorporated, et al.;</p> <p>6 in the United States District Court, Eastern</p> <p>7 District of Michigan, Southern Division; Case</p> <p>8 Number 2:21-cv-10312.</p> <p>9 Today's date is Friday, October 28, 2022.</p> <p>10 The time on the video monitor is now 10:08 a.m.</p> <p>11 eastern time. The remote videographer today is</p> <p>12 John Parkman, representing Planet Depos. All</p> <p>13 parties of this video deposition are attending</p> <p>14 remotely.</p> <p>15 Would counsel please voice-identify</p> <p>16 themselves and state whom they represent.</p> <p>17 MR. KREMEN: Stanley Kremen, representing</p> <p>18 the plaintiff Trutek Corporation.</p> <p>19 MS. PETERSON: Liane Peterson from Foley</p> <p>20 & Lardner, LLP, representing the defendant</p> <p>21 BlueWillow Biologics.</p> <p>22 VIDEO SPECIALIST: The court reporter</p> <p>23 today is Debbie Whitehead, representing Planet</p> <p>24 Depos.</p> <p>25 Would the reporter please swear in the</p>	5	<p>1 you, besides Mr. Kremen?</p> <p>2 A No, there isn't.</p> <p>3 Q Mr. Haidri, have you had your deposition</p> <p>4 taken before?</p> <p>5 A Yes, I have.</p> <p>6 Q How many times?</p> <p>7 A Once.</p> <p>8 Q And was your prior deposition, was that</p> <p>9 in the context of providing expert testimony or in</p> <p>10 some other capacity?</p> <p>11 A As a plaintiff.</p> <p>12 Q So you were the named plaintiff, and your</p> <p>13 deposition was taken in that capacity?</p> <p>14 A That is correct.</p> <p>15 Q Generally speaking, what was the subject</p> <p>16 matter of that case?</p> <p>17 A I was a victim of an automobile accident.</p> <p>18 That is what the matter was all about.</p> <p>19 Q Thank you.</p> <p>20 Well, I will just briefly go over some</p> <p>21 ground rules, particularly since we're doing this</p> <p>22 remotely, so that we can make sure that the</p> <p>23 deposition runs smoothly. Okay?</p> <p>24 A Yeah. Please go ahead.</p> <p>25 Q I'm going to ask that you wait until I</p>	
<p>1 witness.</p> <p>2 AMIRALI Y. HAIDRI, ESQUIRE,</p> <p>3 having been duly sworn, testified as follows:</p> <p>4 EXAMINATION BY COUNSEL FOR</p> <p>5 DEFENDANT/COUNTER-PLAINTIFF</p> <p>6 BY MS. PETERSON:</p> <p>7 Q Good morning.</p> <p>8 Could you please state your full name and</p> <p>9 address, for the record.</p> <p>10 A Amiral Y. Haidri. Residential address</p> <p>11 202 Hillside Avenue, Springfield, New Jersey,</p> <p>12 07081.</p> <p>13 Q Thank you. And my name is Liane</p> <p>14 Peterson. I am one of the lawyers who is</p> <p>15 representing the defendant BlueWillow Biologics in</p> <p>16 this case, and I'll be taking your deposition.</p> <p>17 It's nice to meet you.</p> <p>18 A Thank you. My pleasure.</p> <p>19 Q And, Mr. Haidri, where are you physically</p> <p>20 located today?</p> <p>21 A I am in the office of Stanley Kremen.</p> <p>22 Q And I know that Mr. Kremen is sitting</p> <p>23 there in the office with you. Right?</p> <p>24 A Yes.</p> <p>25 Q Is there anybody else in the room with</p>	6	<p>1 finish with my questions before you start to</p> <p>2 respond, and I'll try to do the same when you are</p> <p>3 speaking. Okay?</p> <p>4 A Yes.</p> <p>5 Q I'm going to also ask that you provide</p> <p>6 verbal answers to my questions, rather than</p> <p>7 shaking your head or nodding or saying uh-huh.</p> <p>8 Is that okay?</p> <p>9 A Yes, that is okay.</p> <p>10 Q And if at any point you do not understand</p> <p>11 one of my questions or you need me to repeat the</p> <p>12 question, please just ask. Otherwise I will</p> <p>13 assume that you understood the question. Okay?</p> <p>14 A Okay, I'll ask if I need clarification.</p> <p>15 Q Mr. Haidri, are you aware of any reason</p> <p>16 why you would be unable to provide complete and</p> <p>17 truthful testimony during your deposition today?</p> <p>18 A No.</p> <p>19 MS. PETERSON: Let's mark as Exhibit 31</p> <p>20 the deposition notice of Mr. Haidri, please.</p> <p>21 (Exhibit 31 marked for identification and</p> <p>22 is attached to the transcript.)</p> <p>23 Q Mr. Haidri, do you recognize Exhibit 31?</p> <p>24 Have you seen it before?</p> <p>25 A I have not seen it before.</p>	8

Transcript of Amirali Y. Haidri, Esquire

3 (9 to 12)

October 28, 2022

<p>1 Q But you understand that you are appearing 2 today for your deposition pursuant to a deposition 3 notice that was served in the Trutek versus 4 BlueWillow Biologics matter. Correct?</p> <p>5 A That is what I have been informed of. I 6 have not seen this notice before.</p> <p>7 MS. PETERSON: We can take that down.</p> <p>8 Q Mr. Haidri, have you ever been retained 9 to provide opinions as a testifying expert in the 10 past four years?</p> <p>11 A No, I have not.</p> <p>12 Q Have you ever been retained to provide 13 opinions as a testifying expert at any time?</p> <p>14 A No, I have not.</p> <p>15 Q Have you ever prepared any type of expert 16 report or declaration for any type of contested 17 proceeding?</p> <p>18 A Well, not really a contested proceeding, 19 but I'm a member of certain committees where issue 20 joint opinions, and I have signed on on those, 21 onto those opinions.</p> <p>22 Q So that would be opinions that were 23 issued for I guess certain bar-related committees 24 that you're a member of?</p> <p>25 A That is correct.</p>	<p>9</p> <p>11 A No, I have not been.</p> <p>2 Q So just the Matrixx Initiatives matter 3 and the commercial litigation matter involving 4 breach of contract, those are the only two times 5 you've been retained by Trutek?</p> <p>6 A That is correct, as of today.</p> <p>7 Q When was the commercial litigation matter 8 filed?</p> <p>9 A As best as I recall it, it was in April 10 2021.</p> <p>11 Q And what court was that filed in?</p> <p>12 A Superior Court of New Jersey, Somerset 13 County.</p> <p>14 Q And who was the other party?</p> <p>15 A Their name is Jintec America, Inc.</p> <p>16 Q And what products were involved in that 17 case?</p> <p>18 A It was a case of sales of the NasalGuard 19 product that Jintec was contractually obligated to 20 buy and pay for.</p> <p>21 Q And what was Jintec, Incorporated's, role 22 with respect to the sales of NasalGuard?</p> <p>23 A Can you please repeat that? I can't 24 understand your question.</p> <p>25 Q What was -- the other party --</p>
<p>1 Q Mr. Haidri, have you ever been retained 2 by Trutek to provide either testifying or 3 consulting expert services on any other matter?</p> <p>4 A No, I have not.</p> <p>5 Q Have you ever been retained by 6 Trutek's -- I'm sorry, let me start that over 7 again.</p> <p>8 Have you ever been retained by Trutek 9 previously in any context?</p> <p>10 A I have been.</p> <p>11 Q Can you explain, please.</p> <p>12 A I was the local counsel in a certain 13 federal court matter against a corporation called 14 Matrixx Initiatives.</p> <p>15 Q Apart from the federal court matter 16 against Matrixx Initiatives, have you ever been 17 retained by Trutek in any other context?</p> <p>18 A I have been.</p> <p>19 Q What other times have you been retained 20 by Trutek?</p> <p>21 A In a commercial litigation matter 22 involving a breach of contract.</p> <p>23 (Clarification by the court reporter.)</p> <p>24 Q Are there any other instances when you've 25 been retained by Trutek?</p>	<p>10</p> <p>12 A The defendant. Okay?</p> <p>2 Q Okay. They were the defendant. And what 3 was their involvement with NasalGuard?</p> <p>4 A They entered into two different contracts 5 for foreign markets, and they were obligated to 6 place certain orders according to the contract. 7 And with one particular territory they failed to 8 place the order. And with respect to another 9 territory, they placed an order but did not follow 10 up with the necessary payment for the 11 manufactured -- manufacturing of the goods 12 involved to take place.</p> <p>13 And -- okay.</p> <p>14 Q And is it correct that the contracts were 15 for purchasing NasalGuard outside of the United 16 States?</p> <p>17 A That is correct, for foreign markets.</p> <p>18 Q Is that litigation still pending?</p> <p>19 A It is pending.</p> <p>20 Q I'd like to talk about the other matter 21 you identified, the matter involving Matrixx 22 Initiatives.</p> <p>23 That matter was filed in the District 24 Court of New Jersey. Correct?</p> <p>25 A That is correct.</p>

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Transcript of Amirali Y. Haidri, Esquire

4 (13 to 16)

October 28, 2022

	13		15
1 Q	And that case against Matrixx involved	1 A	No; I was the only counsel. And then I
2 Trutek's claims of infringement of the '802		2	filed a motion for Mr. Kremen to be waived in as
3 patent. Correct?		3	pro hac vice counsel.
4 A	It is correct, yes.	4	Q And Mr. Kremen was not admitted pro hac
5 Q	And that's the same '802 patent that's	5	to the New Jersey Matrixx matter until about nine
6 being asserted by Trutek in this matter against		6	months after the litigation was filed. Right?
7 BlueWillow Biologics. Right?		7	A Probably. Sounds right.
8 A	That is my understanding.	8	Q So for the first nine months of the
9 Q	What was your role in representing Trutek	9	litigation, you were Trutek's only attorney
10 in the New Jersey litigation against Matrixx?		10	representing it in the matter?
11 A	I was the local counsel for Trutek.	11	A Yeah, I was the only attorney of record.
12 Q	And what did you do in that role?	12	Q Do you know why you were retained by
13 A	I filed a complaint and served motions, pleadings, and appearances.	13	14 Trutek for the Matrixx litigation?
14		14	MR. KREMEN: Objection to form.
15 Q	Anything else?	15	A It's because I'm an attorney admitted in
16 A	Settlement -- mediation conference.	16	the State of New Jersey, and as a registered
17 Q	So you also participated in a settlement	17	patent attorney in the bar again.
18 or a mediation conference with Matrixx?		18	Q Did you know Mr. Kremen before filing the
19 Is that what you said?		19	litigation against Matrixx?
20 A	Yeah, I did participate in the mediation.	20	A I certainly did.
21 Q	And was that one mediation conference	21	Q In what context?
22 that you participated in, or were there multiple?		22	A I was -- I was and still am a Master in
23 A	Only one.	23	the John C. Lifland American Inn of Court, and
24 Q	Did you participate in any other	24	Mr. Kremen had joined a year or two before me.
25 discussions concerning settlement over the course		25	And that's how we met each other.
	14		16
1 of your representation of Trutek in the Matrixx		1	Q And did you know Mr. Wahi or anybody at
2 matter?		2	Trutek before you were retained by them to file
3 A	Beyond the mediation, I do not recall	3	the litigation matter against Matrixx?
4 anything.		4	A I'm not sure what you mean by whether I
5 Q	And I understand that Mr. Kremen was also	5	knew Mr. Wahi. In what context?
6 counsel representing Trutek in that Matrixx		6	Can you please clarify?
7 litigation.		7	Q Had you ever met Mr. Wahi before filing
8 Is that correct?		8	the case against Matrixx?
9 A	That is correct, he was my pro hac vice	9	A Obviously I met with him so that he could
10 counsel and, in fact, lead counsel.		10	instruct me to file the complaint.
11 Q	Approximately how long did the Matrixx	11	Q Yeah, of course.
12 litigation last?		12	When were you first contacted by Mr. Wahi
13 A	As best as I can recall, it has been	13	to discuss filing a complaint against Matrixx?
14 close for a year or two.		14	A Let's say, if I go by my memory, if the
15 Q	But do you --	15	complaint was filed three-and-a-half years ago,
16 A	A year and a half is what I would say was	16	then I probably met Mr. Wahi a couple of months
17 the length of it.		17	before then to discuss what he wanted me to do.
18 Q	And do you recall when the litigation	18	Q So prior to the time that Mr. Wahi
19 against Matrixx was filed?		19	contacted you to discuss the potential litigation
20 A	Well, if I recollect -- I can't really	20	21 against Matrixx, you had never met him before?
21 say that I recall for certain -- it would be about		21	A No, I had not.
22 three to three-and-a-half years before now.		22	Q So just to confirm, it was Mr. Wahi who
23 Q	Was Mr. Kremen the lead counsel for	23	24 contacted you about filing the case against
24 Trutek when the complaint was first filed against		25	25 Matrixx, and not Mr. Kremen?
25 Matrixx?			A Actually, it's not as simple as that.

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Transcript of Amirali Y. Haidri, Esquire

5 (17 to 20)

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	17		19
1 Mr. Kremen introduced me to Mr. Wahi.		1 that role?	
2 Q And then after Mr. Kremen introduced you		2 A I'm sure she was. I'm not aware of what	
3 to Mr. Wahi, you had some meetings or discussions		3 exactly her responsibilities.	
4 with Mr. Wahi to discuss the potential litigation		4 Q Do you know, like, was she a	
5 matter against Matrixx.		5 vice-president in charge of some particular	
6 Is that right?		6 operation of Trutek?	
7 A That is correct.		7 A I'd rather not guess. But she was	
8 Q Okay. So would it be fair to say then		8 vice-president, that's all I can say.	
9 that during the course of your representation of		9 Q Okay.	
10 Trutek in the Matrixx matter, you did communicate		10 A Still is, as a matter of fact.	
11 directly with Mr. Wahi of Trutek?		11 Q Now, during the course of your	
12 A And his office, Trutek Corporation, yes.		12 representation of Trutek in the Matrixx matter,	
13 Q Who else did you communicate with at		13 did you also communicate directly with opposing	
14 Trutek in connection with the Matrixx litigation		14 counsel representing Matrixx?	
15 matter?		15 A I did.	
16 A The president of Trutek and another		16 Q And you understand that Matrixx also	
17 vice-president.		17 filed a petition for inter partes review at the	
18 Q Do you recall their names?		18 Patent and Trademark Office with respect to the	
19 A I do.		19 '802 patent. Right?	
20 Q What are their names?		20 A That is what I'm told. I don't know	
21 A The president is called Shaheda Ashtekar.		21 anything more about it.	
22 Q And then who was the other vice-president		22 Q Did you have any role or did you	
23 that you communicated with in connection with the		23 participate at all in that IPR proceeding	
24 Matrixx litigation matter?		24 involving the '802 patent?	
25 A Kanika Wahi.		25 A No, I was not involved.	
	18		20
1 Q What was the first name?		1 Q At the time of the Matrixx litigation,	
2 A Kanika.		2 did you review or -- did you review the petition	
3 Q Kanika?		3 for the IPR?	
4 A Do you want me to spell it?		4 A I believe I saw it. I can't recall	
5 Q Sure.		5 exactly anything about it.	
6 A K for Kenneth, A for apple, N for Nancy,		6 Q Were you asked by anyone to review the	
7 I for Irene, K for Kenneth, A for apple.		7 petition and provide your analysis of the	
8 Q Is that Mr. Wahi's daughter?		8 petition?	
9 A That's what I'm told.		9 A No, I was not.	
10 Q Could you spell the name of the President		10 Q During the nine-month period after the	
11 of Trutek that you identified earlier?		11 Matrixx litigation was filed, before Mr. Kremen	
12 A Indeed I will. S for Sam, H for Harry, A		12 entered an appearance, what was your	
13 for apple, H for Harry, I for Irene, D for dog, A		13 responsibility for handling the litigation matter	
14 for apple. Shaheda.		14 for Trutek?	
15 Q And that's his first name or last name?		15 A Well, I was the counsel.	
16 A It's her first name.		16 That's all I can say.	
17 Q Her first name. Okay. What is her last		17 Q So would it be fair to say that you were	
18 name?		18 responsible for running that litigation and	
19 A Ashtekar.		19 overseeing all aspects of the litigation during	
20 Q Ashtekar?		20 that time period?	
21 A Ashtekar, yes.		21 A Doing what I needed to do with the court	
22 Q Okay. Thank you.		22 and opposing counsel.	
23 Now, with respect to Ms. Wahi, do you		23 Q And you understand that Matrixx raised	
24 know what she was vice-president of? Did she have		24 several allegations of invalidity of the '802	
25 a -- was she responsible for certain things in		25 patent in that litigation pending in New Jersey.	

Transcript of Amirali Y. Haidri, Esquire

6 (21 to 24)

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	21	23
1 Correct?		1 A I certainly considered it to be valid, if
2 A Well, they have the usual defenses any		2 that is your question.
3 infringer raises.		3 Q Did you assess the validity of the '802
4 Q And so you were responsible for assessing		4 patent in response to invalidity defenses raised
5 those defenses and considering responses to them.		5 by Matrixx --
6 Right?		6 MR. KREMEN: Objection. Form.
7 A I have to, yes.		7 Q -- while representing Trutek?
8 Q Approximately how much time do you think		8 MR. KREMEN: I'm sorry. Objection to
9 you devoted to handling the Trutek litigation		9 form.
10 matter pending in New Jersey over that		10 A And I didn't quite understand. That was
11 year-and-a-half period?		11 a long question.
12 A I can't give you an exact estimate. It		12 Q Well, I'll try to rephrase the question
13 would be hundreds of hours, I'm sure.		13 and get it all out at once.
14 Q And over the course of representing		14 A Okay.
15 Trutek in the Matrixx litigation, did you review		15 Q While representing Trutek in the Matrixx
16 the '802 patent?		16 litigation matter, did you assess the validity of
17 A Yes, I reviewed it a few times.		17 the '802 patent in response to the invalidity
18 Q And did you consider the disclosure of		18 defenses raised by Matrixx?
19 the '802 patent?		19 A Yes, I did.
20 A I have seen it, yes.		20 Q So would it be fair to say that over the
21 Q And I'm asking specifically, did you		21 course of representing Trutek in the Matrixx
22 consider or review the disclosure of the '802		22 litigation, you obtained an understanding of the
23 patent in the context of your work in representing		23 '802 patent and the prior art?
24 Trutek in the Matrixx litigation matter?		24 A Yes.
25 A Broadly speaking, yes.		25 Q And your experience in representing
	22	24
1 Q And did you assess the claim scope of the		1 Trutek in the Matrixx litigation informed your
2 '802 patent over the course of your representation		2 understanding of the '802 patent and the prior
3 of Trutek in the Matrixx litigation matter?		3 art. Right?
4 A Will you please repeat that question?		4 A That is correct.
5 Q Did you assess the claim scope of the		5 Q Did you draw on what you learned while
6 '802 patent over the course of representing Trutek		6 representing Trutek in the Matrixx litigation when
7 in the Matrixx litigation matter?		7 forming your expert opinions that you prepared for
8 A Yes, I did.		8 the present litigation?
9 Q Did you assess Trutek's claims of		9 A Yeah, somewhat.
10 infringement of the '802 patent over the course of		10 Q In what context, or how did they inform
11 representing Trutek in the Matrixx litigation		11 your opinions?
12 matter?		12 A Well, I was aware of the art cited
13 A Yes.		13 against the '802 patent, the one and only office
14 Q Did you assess claim construction of the		14 action there was, and what the patent as granted
15 '802 patent in the course of representing Trutek		15 truly stands for.
16 in the Matrixx litigation matter?		16 Q And when you say what the patent as
17 A Informally, yes.		17 granted stands for, you're talking about the
18 Q And when you say "informally," that's		18 disclosure of the patent and the invention claimed
19 because the court never conducted formal Markman		19 in the patent. Correct?
20 proceedings in the Matrixx matter.		20 A Yes, that is true.
21 Is that correct?		21 Q And your understanding of the disclosure
22 A There was no Markman hearing.		22 of the '802 patent and the invention claimed in
23 Q And did you assess the validity of the		23 the '802 patent, did that come from discussions
24 '802 patent in the course of representing Trutek		24 with Mr. Wahi or anybody at Trutek?
25 in the Matrixx litigation matter?		25 A Not really. I just studied the papers

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7 (25 to 28)

October 28, 2022

	25		27
1 connected with the patent and what led to it.		1 A The first one would have been over about	
2 Q Did you ever discuss with Mr. Wahi over		2 a couple of years ago. Second one just came to an	
3 the course of representing Trutek in the Matrixx		3 end within this month.	
4 litigation his view of the '802 patent and what it		4 Q And those two litigation matters, you	
5 discloses and what it claims?		5 said the name of the plaintiff that you	
6 A No, I did not.		6 represented was William Araujo. Right?	
7 Q Did you discuss with Mr. Kremen while		7 A Araujo, right.	
8 representing Trutek in the Matrixx litigation the		8 Q Was he the inventor on the patent?	
9 disclosure of the '802 patent --		9 A He was.	
10 A Yes.		10 Q Other than those two litigation matters	
11 Q -- and what it claims?		11 representing Mr. Araujo, have you ever jointly	
12 A Yes.		12 represented a party in litigation with Mr. Kremen?	
13 Q Did you discuss with Mr. Kremen while		13 A Well, there was a trademark infringement	
14 representing Trutek in the Matrixx litigation any		14 matter where he was a consultant with me, but not	
15 issues addressed to the invalidity challenges to		15 an attorney of record.	
16 the '802 patent?		16 Q Okay. Anything else?	
17 A I don't recall. I don't think I did.		17 A No, nothing else.	
18 Q In your meetings with Mr. Wahi leading up		18 Q And what about Mr. Keith Altman; have you	
19 to the filing of the Matrixx litigation, did		19 ever worked with Mr. Altman on any litigation	
20 Mr. Wahi provide you any information about his		20 matters before this one?	
21 view of the '802 patent?		21 A Never met him.	
22 A No, I don't think so.		22 Q And apart from the Trutek matter filed	
23 Q Have you ever been retained by Mr. Kremen		23 against Matrixx, the present Trutek matter filed	
24 previously on any other matter?		24 against BlueWillow Biologics, and the	
25 A Well, we jointly represented a certain		25 breach-of-contract action that you identified,	
	26		28
1 plaintiff in a patent case.		1 have you ever been retained by Trutek on any other	
2 Q That's a different patent case not		2 matter?	
3 involving Trutek?		3 A No, I don't think so. In fact, I have	
4 A Nothing to do with Trutek.		4 not been.	
5 Q And that was a litigation matter?		5 Q I'd like to focus now on your retention	
6 A Two of them. They were both litigation		6 for this particular matter involving BlueWillow	
7 matters.		7 Biologics. Okay?	
8 Q And who was the party that you jointly		8 A Okay, I'm listening.	
9 represented with Mr. Kremen?		9 Q When were you retained as an expert in	
10 A You mean the name of the plaintiff?		10 this matter?	
11 Q Yes.		11 A It will be about three or four months	
12 A William Araujo.		12 ago.	
13 Q Can you spell that last name?		13 Q And who were you retained by?	
14 A A-R-A-U-J-O.		14 A By Mr. Kremen.	
15 Q Was that a patent infringement matter?		15 Q And what did Mr. Kremen explain to you	
16 A Yes, there were.		16 about what you were going to be requested to do?	
17 Q When were those filed?		17 A Well, he explained that I had to provide	
18 A One was filed in the District of New		18 a report defending the validity of the '802	
19 Jersey.		19 patent.	
20 Q Okay. Where was the other filed?		20 Q Did Mr. Kremen provide you with any	
21 A Southern District of New York.		21 materials that he asked you to consider in forming	
22 Q And when were those two litigations		22 your opinions regarding the validity of the '802	
23 filed?		23 patent?	
24 A Time frame?		24 A Yeah, I received some materials.	
25 Q Yes.		25 Q What did you receive?	

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Transcript of Amirali Y. Haidri, Esquire

8 (29 to 32)

October 28, 2022

	29		31
1 A A report from Dr. Amiji and prosecution		1 matter involving BlueWillow Biologics?	
2 history of the '802 patent, other prior		2 A No, I have not.	
3 publications that may have some relevance.		3 Q So you have not had any conversations	
4 Q Can you identify those prior publications		4 with Mr. Wahi since you have been retained as an	
5 for me?		5 expert in this matter?	
6 A As best as I recall, there are two		6 A Well, that's not so simple to answer.	
7 patents of some -- that have been mentioned a few		7 But, no, in this context, I have not spoken to	
8 times, called Wadstrom and Rolf. And they are		8 Mr. Wahi. I have the other litigation pending,	
9 not, in fact, patents, but they are publications.		9 therefore I will speak to him regularly.	
10 Q And do you recall any other materials		10 Q That would be the breach-of-contract	
11 that Mr. Kremen provided you with in connection		11 litigation?	
12 with forming your opinions regarding the validity		12 A That is correct.	
13 of the '802 patent?		13 Q Did you speak with anybody else at Trutek	
14 A Many other materials. Names I recall are		14 since -- strike that.	
15 Baker and Khaled.		15 Did you speak with anybody else at Trutek	
16 Q So basically that's the prior art that's		16 in connection with forming your opinions on the	
17 addressed in your report. Right?		17 BlueWillow Biologics matter after being retained?	
18 A If you want to call it prior art, that's		18 A No.	
19 what it is.		19 Q Did Mr. Wahi or anybody else at Trutek	
20 Q Did Mr. Kremen provide you any other		20 provide you with any information that you used to	
21 materials or documents or information that you		21 form your opinions in this matter?	
22 used to form your opinions that are not		22 A No.	
23 specifically identified in your report?		23 Q Did you rely on any information provided	
24 A No, I can't say he did.		24 by Mr. Wahi during the earlier litigation when	
25 Q Mr. Haidri, do you intend to testify at		25 forming your opinions on the BlueWillow Biologics	
	30		32
1 the trial if it occurs in this matter?		1 matter?	
2 A Well, it will be up to the parties and		2 A I'm not sure I understand your question,	
3 Mr. -- if I'm asked, I will testify, yes. I		3 but I think -- I think the answer is no.	
4 haven't been asked.		4 Q I can rephrase that.	
5 Q And will you be -- if you are asked to		5 Did you receive any information or any	
6 testify at the trial if one occurs, will you be		6 documents from Mr. Wahi at any time that you used	
7 compensated for your testimony?		7 or considered when forming your opinions in the	
8 A I would expect that that's the usual		8 BlueWillow Biologics matter?	
9 thing in litigation.		9 A Then I stand with my answer. The answer	
10 Q And what rate will you be compensated at		10 is no.	
11 for your testimony at trial?		11 Q Did you receive any information or any	
12 A Well, it depends on when the trial takes		12 documents from anybody at Trutek at any time that	
13 place. But my billing rate at present is \$350 an		13 you used or considered when forming your opinions	
14 hour.		14 in the BlueWillow Biologics matter?	
15 Q And that's the rate that you have billed		15 A No.	
16 Trutek for the work that you have conducted in		16 Q Now, over the entire course of your	
17 this matter filed against BlueWillow?		17 representation of Trutek, how many times do you	
18 A That is right.		18 think you've spoken to Mr. Wahi?	
19 Q How many hours have you spent on this		19 A Dozens of times, in various different	
20 matter involving BlueWillow in preparing your		20 context, not just the -- not just the Matrixx	
21 opinions?		21 matter or the breach-of-contract matter.	
22 A I don't have my billing sheet before me,		22 Q How many times do you think you spoke to	
23 but my best estimate is it's 40 to 50 hours.		23 Mr. Wahi in connection with one of the matters	
24 Q Did you speak with anybody other than		24 involving the '802 patent?	
25 Mr. Kremen in connection with your work on this		25 A How many times I cannot possibly recall.	

Transcript of Amirali Y. Haidri, Esquire

9 (33 to 36)

October 28, 2022

	33		35
1 Must be dozens of times.		1 A I don't recall now.	
2 Q And did any of those conversations relate		2 Q Did you speak to Mr. -- or, I'm sorry,	
3 to prior art asserted against the '802 patent?		3 did you speak to Dr. Lemmo in connection with the	
4 A I don't think so. I cannot recall that.		4 Matrixx litigation?	
5 Q I'm sorry. Is your answer that you don't		5 A No, I have not.	
6 remember or that you don't believe so?		6 Q So have you ever had any conversation	
7 A I don't believe so.		7 with Dr. Lemmo at any point in time?	
8 Q Did any of your dozens of conversations		8 A Well, not since the conclusion of the	
9 with Mr. Wahi relate to the disclosure of the '802		9 Matrixx litigation I haven't spoken to him.	
10 patent?		10 Q Did you have any conversations with	
11 MR. KREMEN: Objection to the form of the		11 Dr. Lemmo during the course of the Matrixx	
12 question.		12 litigation?	
13 A The answer is no.		13 A Yeah, I met him one time and may have	
14 Q So Mr. Wahi never explained to you what		14 spoken to him by telephone a few times.	
15 he invented in the '802 patent?		15 Q And what was the purpose for that one	
16 A No, he didn't. I just know what the		16 meeting with Dr. Lemmo?	
17 patent says.		17 A He was retained as an expert for Trutek	
18 Q Did any of your conversations with		18 in that litigation.	
19 Mr. Wahi relate to his claims that other companies		19 Q So why did you meet with him? What did	
20 have been infringing the '802 patent?		20 you discuss at that meeting?	
21 A Obviously he informed me that Matrixx		21 A The scope of the patent claims, and more	
22 Initiatives was infringing. Or that that was his		22 importantly what the composition of the Zicam	
23 opinion.		23 product was and if it read upon the claims and we	
24 Q Did he explain to you his explanation for		24 had a basis for proving infringement.	
25 why he believes that Matrixx was infringing?		25 Q Did you have any conversations with	
	34		36
1 A Yeah, he explained.		1 Dr. Lemmo during the course of the Matrixx	
2 Q And in the context of providing that		2 litigation concerning any invalidity challenges	
3 explanation, did he provide any explanation about		3 raised against the '802 patent?	
4 the scope of the '802 patent or the claimed		4 A No, I was not involved.	
5 invention of the '802 patent?		5 Q Who was involved in those?	
6 A Indirectly. He just pointed out what the		6 A Mr. Kremen.	
7 Matrixx product called Zicam involved, and how it		7 Q And just to confirm, you have not met	
8 read upon the claims of the '802 patent.		8 with or spoken to Dr. Lemmo since the Matrixx	
9 Q And you understand that Trutek has		9 litigation concluded?	
10 retained the services of other experts in this		10 A I have already said that.	
11 present litigation. Correct?		11 Yes, I have not.	
12 A I'm aware of a few names, yes.		12 Q Have you reviewed any of the reports that	
13 Q Have you spoken with any of the other		13 Dr. Lemmo prepared in this litigation filed	
14 experts retained by Trutek in this litigation?		14 against BlueWillow Biologics?	
15 A I know one of them, but I haven't spoken		15 A Yes, I have.	
16 to him in the context of this litigation.		16 Q Which of Dr. Lemmo's reports or	
17 Q And who is that?		17 declarations have you reviewed?	
18 A Dr. Lemmo.		18 A They're not before me, so I cannot tell	
19 Q And how do you know Dr. Lemmo?		19 you exactly what, but he did render an opinion	
20 A He was an expert in the Matrixx		20 that I have read.	
21 litigation.		21 Q And do you recall when you read that	
22 Q What was he asked to opine on in the		22 opinion rendered by Dr. Lemmo?	
23 Matrixx litigation?		23 A It will be sometime this month.	
24 A Broadly on the subject of infringement.		24 Q So --	
25 Q Anything else?		25 A October, that is. October 2022.	

Transcript of Amirali Y. Haidri, Esquire

October 28, 2022

10 (37 to 40)

	37		39	
1	Q	So you reviewed at least one of	1	your expert report?
2		Dr. Lemmo's reports sometime this month.	2	A No.
3	A That is correct.		3	Q Now, you've submitted one expert report
4	Q	Did you review any of Dr. Lemmo's reports	4	in this matter. Correct?
5		or declarations before you formed the opinions	5	A Yes.
6		that you provided in your expert report?	6	Q What was the nature of your assignment?
7	A Actually, I don't think so.		7	A To rebut the allegations of invalidity
8	Chronologically I probably saw his report after		8 put forth by your expert, Dr. Amiji.	
9	mine was prepared.		9 Q Does your responsive report contain all	
10	Q	And then what about the other two experts	10	10 of the opinions that you have formed directed to
11		retained by Trutek in this matter, Mr. Burns and	11	11 the issue of validity of the '802 patent?
12		Dr. Ermakov. Do you know those names?	12	MR. KREMEN: Objection to the form of the
13	A I've heard those names. I haven't met		13 question.	
14	them.		14 A Well, I don't want to put myself in some	
15	Q	You have never met Mr. Burns in any	15 kind of a conundrum, but yes. Basically,	
16		context.	16 generally speaking, the answer is yes. But I	
17		Is that correct?	17 reserve the right to issue any amendments.	
18	A That is correct.		18 Q But as of today you do not have any	
19	Q	And have you ever met Dr. Ermakov in any	19 amendments or any changes to your report?	
20		context?	20 A No.	
21	A No.		21 Q Does your responsive report contain a	
22	Q	Did you meet with Mr. Burns or have any	22 complete statement of all of the bases for your	
23		conversations with Mr. Burns in connection with	23 opinions?	
24		24 A Complete statement as of the time it was		
25	A No.		25 prepared. But as I said earlier, supplements and	
	38		40	
1	Q	Did you meet with Dr. Ermakov or have any	1 amendments are still a possibility.	
2		conversations with Dr. Ermakov in connection with	2 Q Yeah, of course. I'm just referring to	
3		the Matrixx matter?	3 the report as it was prepared.	
4	A No.		4 So the answer is, yes, the report as	
5	Q	And you understand that Mr. Burns and	5 prepared contains a complete statement of all of	
6		Dr. Ermakov conducted testing in connection with	6 the bases for your opinions?	
7		the Matrixx matter. Correct?	7 A Yes, on the date it was prepared. Yes.	
8	A I cannot say that I know that for sure.		8 Q And does your responsive report contain a	
9	I've just been told that.		9 complete statement of your qualifications directed	
10	Q	Well, the testing that Dr. Ermakov and	10 to the subject matter of your opinions?	
11		Mr. Burns conducted on the Matrixx products, that	11 A My qualifications are what they are,	
12		was part of the record in the Matrixx litigation,	12 yeah.	
13		13 Q Did you draft the expert report by		
14	A I do not recall that.		14 yourself?	
15	Q	15 A Yes, I did.		
16		16 Q Did you receive any assistance in		
17		17 drafting your report?		
18	A No.		18 A No; only background materials that were	
19	Q	19 supplied to me, including in particular		
20		20 Dr. Amiji's report and whatever Dr. Amiji refers		
21		21 to.		
22	Q	22 Q What other background materials were		
23		23 supplied to you?		
24	A Well, as I said to you before -- it's			
25	already on the record -- the Wadstrom and the Rolf			

Transcript of Amirali Y. Haidri, Esquire

11 (41 to 44)

October 28, 2022

	41		43
1 patents, Khaled, Baker, and a few others.		1	Trutek to prepare for your deposition today?
2 Q So you're talking about the references		2	A No.
3 discussed by Dr. Amiji. Correct?		3	MS. PETERSON: How about we go off the
4 A Prior publications, yes.		4	record.
5 Q What I'm asking about is whether there		5	VIDEO SPECIALIST: We're going off the
6 are -- strike that.		6	record. The time is now 11:09 a.m.
7 So every section of your responsive		7	(A recess was taken.)
8 report is your own opinion and drafted in your own		8	VIDEO SPECIALIST: We're back on the
9 words.		9	record. The time is now 11:20 a.m.
10 Is that correct?		10	BY MS. PETERSON:
11 A That is correct.		11	Q Mr. Haidri, one other question about the
12 Q Mr. Haidri, what did you do to prepare		12	12 Matrixx litigation.
13 for your deposition today?		13	Why did Mr. Kremen not apply for pro hac
14 A I reviewed -- rereviewed my own report		14	vice admission for the Matrixx litigation matter
15 and deposition of Dr. Lemmo and the reports of		15	15 until nine months after the complaint was filed?
16 Dr. Amiji.		16	MR. KREMEN: Objection to form.
17 Q Did you review the deposition transcript		17	A It's because Mr. Kremen was not a member
18 of Dr. Amiji?		18	of any bar at the time the complaint was filed.
19 A Yes.		19	Q So for the nine months leading up to that
20 Q Did you review any other materials to		20	20 point in time, you were the only attorney
21 prepare for your deposition today, besides your		21	21 representing Trutek that was a member of any state
22 report, Dr. Lemmo's transcript, Dr. Amiji's report		22	22 bar of the United States?
23 on invalidity, and Dr. Amiji's deposition		23	A I was, yes, only attorney.
24 transcript?		24	Q Mr. Haidri, we're going to show you a
25 A That is correct. I can't say that that's		25	couple of exhibits during the rest -- the
	42		44
1 everything, but I did look at the prior art		1	remainder of the deposition. Jennifer is going to
2 citations and the first office action that issued		2	put those up on the screen. And if you would like
3 in the '802 patent.		3	3 us to move through them just ask us, and we can
4 Q So you reviewed each of those items, in		4	4 zoom in or we can scroll through. Okay?
5 addition to some prior art, as well as the first		5	A All right.
6 office action issued in the '802 patent.		6	MS. PETERSON: So let's mark as Exhibit
7 Is that correct?		7	32 a copy of Mr. Haidri's CV.
8 A Broadly speaking, yes.		8	A/V TECHNICIAN: Stand by, please.
9 Q Do you recall any -- never mind.		9	(Deposition Exhibit 32 marked for
10 Did you meet with anybody to prepare for		10	10 identification and is attached to the transcript.)
11 your deposition today?		11	Q Mr. Haidri, do you recognize Exhibit 32
12 A I met with Mr. Kremen.		12	12 as a copy of your CV?
13 Q For how long?		13	A It is. It is, yes.
14 A A few hours.		14	Q Is it complete?
15 Q And when did that meeting occur?		15	A Complete as of today, yes. About to make
16 A Over a couple of weeks on and off.		16	some revisions.
17 Q So you spoke with Mr. Kremen on a few		17	Q You have some revisions to include.
18 occasions over the last few weeks for a few hours		18	Would that be more recent information, to include
19 in total.		19	19 in the CV?
20 Does that sound about right?		20	A More recent, yes.
21 A That is right.		21	Q Do you have any other revisions to make
22 Q Did you meet with or speak to anybody		22	22 apart from the more recent things to include?
23 else to prepare for your deposition today?		23	A No, there are no revisions to make as of
24 A Nobody else.		24	today, but there will be some coming.
25 Q Did you meet with or speak to anybody at		25	Q Now, it looks like you obtained your

Transcript of Amirali Y. Haidri, Esquire

12 (45 to 48)

October 28, 2022

	45		47
1	bachelor's degree in 1971. Correct?	1	Q And what would be -- what would you say
2	A Yes.	2	is the primary focus of your work over that time
3	Q And at that point in time -- actually, we	3	frame as a solo practitioner?
4	could scroll down to the second page.	4	A It had been tort and insurance law up to
5	A Okay.	5	about two, three years ago. But I began to return
6	Q Actually, I take that back. Let's go to	6	to patent and trademark and commercial litigation
7	the very last page.	7	practice.
8	There we go. And we can start at the	8	Q So from 1988 up until about two to three
9	bottom.	9	years ago, your practice had been tort and
10	So after obtaining your bachelor's degree	10	insurance law?
11	in 1971, you started to work for W.P. Thompson &	11	Is that right?
12	Company. Correct?	12	A Yes.
13	A Correct.	13	Q And then about two to three years ago you
14	Q And that involved trademark work?	14	returned to patent, trademark, and commercial
15	A Yes.	15	litigation practice.
16	Q And from there you went to Haseltine &	16	Is that correct?
17	Lake from 1972 to 1981. Correct?	17	A I began to diversify then, and that would
18	A Correct.	18	be correct.
19	Q And that also involved trademark work?	19	Q So over the last two to three years, are
20	A Yes.	20	you still engaged in tort and insurance law
21	Q And then it looks like in 1980, over that	21	claims?
22	time frame, that's when you obtained your J.D.?	22	A Yes. Yes, I am.
23	A In '80, yes.	23	Q Over the last two to three years, what
24	Q And then in 1981, from 1982, you worked	24	would you say has been the approximate percentage
25	for the Texaco Development Corporation?	25	of your work relating to patents?
	46		48
1	A Yes.	1	A Possibly 20 percent.
2	Q And your responsibilities at Texaco were	2	Q And would most of that work relating to
3	as a patent attorney. Correct?	3	patents involve the matters on which you have been
4	A Correct.	4	engaged by Trutek?
5	Q We can scroll up.	5	A And Mr. Araujo.
6	And then from 1982 to 1984 you were	6	Q Mr. Haidri, you do not have any
7	employed by Lever Brothers Company, also has a	7	experience in the formulation or development of
8	patent attorney. Correct?	8	oil and water nanoemulsions. Correct?
9	A Yes.	9	A No; I have to disagree.
10	Q And scroll up, please. There we go.	10	Q What experience do you have in the
11	That's good.	11	formulation or development of oil and water
12	And then it looks like from 1984 to 1988	12	nanoemulsions?
13	you were a partner in the law firm of Haidri,	13	A In Texaco Development Corporation, they
14	Glazer & Kamel.	14	had work of that kind going on in patents directed
15	Is that correct?	15	to it. And also in Lever Brothers Company, which
16	A Yes.	16	is a rather diversified company; not just
17	Q And your practice at that law firm	17	concentrating in soaps and detergents and
18	concentrated in personal injury and workers'	18	toothpaste.
19	compensation claims.	19	Q So would it be fair to say that your
20	Is that correct?	20	experience with nanoemulsions at Texaco and with
21	A Substantially, yes.	21	Lever Brothers was from the context of being a
22	Q And then starting in 1988 to the present,	22	patent lawyer?
23	it says that you have been a solo practitioner.	23	A Yes; not as an inventor, but I was a
24	Right?	24	patent attorney. Yes.
25	A Yes.	25	Q So you were not in the laboratory at

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Transcript of Amirali Y. Haidri, Esquire

13 (49 to 52)

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49

51

1 Texaco or at Lever Brothers actually making any
 2 nanoemulsions or testing any nanoemulsions.

3 Correct?

4 **A Well, I would say yes, I had frequent
 5 contact with the inventors and went into the
 6 laboratories in both corporations.**

7 Q But you, personally, were not involved in
 8 the production or formulation of any nanoemulsions
 9 while employed by Texaco or Lever Brothers.

10 Right?

11 MR. KREMEN: Objection to form.

12 **A I did not personally do it, do that.**

13 Q And the work that was being conducted at
 14 Texaco and Lever Brothers with respect to
 15 nanoemulsions, those were not nanoemulsions
 16 intended for nasal administration. Correct?

17 **A I would not agree, no.**

18 Q Okay. Can you explain?

19 **A Not at Texaco but At Lever, they were
 20 engaged in personal products, and some of them
 21 would be for just any kind of human application.**

22 Q And that would be the soaps?

23 **A Not really. They had -- during my time
 24 there, they had different certain uses for
 25 something called Sanosil analytes, and they**

1 **were doing that.**

2 Q And was that experience something that
 3 you obtained from representing Trutek?

4 **A No. That was at Lever Brothers.**

5 Q Lever products. Okay.

6 Do you have any hands-on experience in
 7 formulating pharmaceutical compositions that are
 8 intended to inhibit infection caused by bacteria?

9 **A No hands-on experience, but only as a
 10 patent attorney.**

11 Q And that would be from reviewing
 12 materials provided by the inventors for purposes
 13 of applying for a patent?

14 **A That is correct.**

15 Q Do you have any hands-on experience in
 16 formulating pharmaceutical compositions that are
 17 intended to inhibit infection caused by viruses?

18 **A As a patent attorney, you have to
 19 understand that an inventor provides you just a
 20 very sketchy idea of it, of an invention. And the
 21 patent attorney has to put meat on the skeleton.**

22 **So I have been involved in that.**

23 Q Now, apart from your work as a patent
 24 attorney, do you have any hands-on experience in
 25 formulating pharmaceutical compositions that are

50

52

1 **I believed that that would be beneficial in human
 2 used in just about any bodily cavity.**

3 Q Would it be fair to say that you do not
 4 have any hands-on experience in preparing any
 5 nanoemulsion -- any nanoemulsions?

6 **A Not during my employment, but certainly
 7 during the laboratories of my alma maters and my
 8 high school.**

9 Q So you're telling me that you prepared
 10 nanoemulsions in high school?

11 **A Emulsions of various kinds, not
 12 necessarily nano. But we were taught how
 13 emulsions are made, and we made them.**

14 Q In what high school course were you
 15 taught about emulsions and how to make them?

16 **A Physics and chemistry and biology.**

17 Q So you're talking about high school level
 18 of physics, chemistry, and biology courses?

19 **A Yes.**

20 Q Dr. Haidri, do you have any hands-on
 21 experience in formulating pharmaceutical
 22 compositions that are intended to be applied to
 23 the nose?

24 **A No hands-on experience, but I had
 25 involvement as a patent attorney, or inventors who**

1 intended to inhibit infection caused by viruses?

2 **A No.**

3 Q Apart from your work as a patent
 4 attorney, do you have any hands-on experience in
 5 formulating pharmaceutical compositions that are
 6 intended to inhibit the nasal inhalation of any
 7 environmental particulate matters?

8 **A No.**

9 Q Apart from your work as a patent
 10 attorney, do you have any hands-on experience in
 11 formulating pharmaceutical compositions that are
 12 intended to capture and hold particulate matter
 13 within the human nose?

14 **A No.**

15 Q Apart from your work as a patent
 16 attorney, do you have any hands-on experience in
 17 formulating pharmaceutical compositions that
 18 comprise cationic or anionic agents?

19 **A No.**

20 Q Apart from your work as a patent
 21 attorney, do you have any hands-on experience in
 22 formulating pharmaceutical compositions that
 23 comprise biocidic agents?

24 I'm sorry, are you still thinking about
 25 my question, or do you need me to repeat it?

Transcript of Amirali Y. Haidri, Esquire

14 (53 to 56)

October 28, 2022

	53		55
1	A I didn't hear your question.	1	Q Mr. Haidri, do you have any hands-on
2	Q Okay. So apart from your work as a	2	experience in developing or formulating
3	patent attorney, do you have any hands-on	3	pharmaceutical products intended to prevent
4	experience in formulating pharmaceutical	4	infection caused by the common cold?
5	compositions that comprise biocidic agents?	5	A No.
6	A No.	6	Q Do you have any hands-on experience in
7	Q Apart from your work as a patent	7	developing or formulating pharmaceutical products
8	attorney, do you have any hands-on experience in	8	intended to prevent infection caused by the flu?
9	formulating pharmaceutical compositions with	9	A Hard for me to say. But broadly
10	biocidic agents for application for nasal	10	speaking, I will say no.
11	administration?	11	Q Mr. Haidri, you do not have an economics
12	A No.	12	or accounting degree. Correct?
13	Q Apart from your work as a patent	13	A Technically, yes; except that I had
14	attorney, do you have any hands-on experience in	14	economics courses in my education.
15	formulating pharmaceutical compositions comprising	15	Q Mr. Haidri, would it be fair to say that
16	biocidic agents to use them to inhibit infection	16	over the course of your career working for private
17	by bacteria or viruses?	17	companies, you were not primarily engaged in the
18	A Please repeat that question. That was	18	19 sales or marketing or advertising of any
19	rather long.	19	commercial products?
20	Q Okay. No problem.	20	A No.
21	Apart from your work as a patent	21	Q I'm sorry, I need to clarify. No, you
22	attorney, do you have any hands-on experience in	22	were not engaged in the sales or marketing or
23	formulating pharmaceutical compositions that use	23	advertising of any commercial products?
24	biocidic agents for the purpose of inhibiting	24	Is that correct?
25	infection by bacteria or viruses?	25	A Yes, that is correct.
	54		56
1	A No.	1	Q And would it also be fair to say that
2	Q Do you have any hands-on experience in	2	over the course of your career working for private
3	testing any pharmaceutical compositions to confirm	3	companies, you did not have any job
4	whether they will work for their intended purpose?	4	responsibilities for product development?
5	MR. KREMEN: Objection to the form of the	5	A No.
6	question.	6	Q So no, you did not have any
7	A No.	7	responsibility for product development of any
8	Q Do you have any hands-on experience in	8	commercial products at your prior employers?
9	testing pharmaceutical compositions to determine	9	A No; only as a support patent attorney.
10	if they are affective to capture and hold	10	Q And at your prior employment, did you
11	particulate matter within the nose or nasal	11	have any responsibility for any clinical testing
12	passage?	12	13 or clinical development of commercial products?
13	A No.	13	A Not with prior employments, employers,
14	Q Do you have any hands-on experience in	14	no.
15	testing pharmaceutical compositions to determine	15	Q But you did as a patent attorney?
16	if they are effective to inhibit infection by	16	A No.
17	bacteria and viruses?	17	Q Do you have any experience in human
18	A No.	18	19 clinical testing?
19	Q Do you have any hands-on experience in	19	A No, not personally.
20	developing or formulating pharmaceutical products	20	MS. PETERSON: Okay. We could take down
21	intended to prevent infection caused by the common	21	that exhibit.
22	cold?	22	Next I would like to pull up a copy of
23	MR. KREMEN: Would you repeat that again?	23	Exhibit 2, which had been previously marked. This
24	I lost -- I got lost in the middle of it.	24	is a copy of the '802 patent.
25	MS. PETERSON: Sure, I can repeat it.	25	(Exhibit 2, previously marked, not

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Transcript of Amirali Y. Haidri, Esquire

15 (57 to 60)

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	57		59
1 attached.)		1 A It's not a limitation. That's what the	
2 Q Mr. Haidri, we've put up on the screen		2 claim says.	
3 here a copy of U.S. Patent Number 8,163,802, which		3 Q For a product to read on the claim, is it	
4 has been marked as Exhibit 2.		4 necessary to satisfy the elements of the claim	
5 Do you recognize this?		5 preamble?	
6 A Yes, I do.		6 A The claim as a whole. You cannot split	
7 Q And you recognize this as a copy of the		7 it into different parts and say, for this reason	
8 '802 patent that's being asserted in this		8 this doesn't read. You have to consider the claim	
9 litigation against BlueWillow. Correct?		9 as a whole.	
10 A That is what I have been informed.		10 Q But you agree with me that every element	
11 Q This is the patent that you considered in		11 of the claim must be present in an accused product	
12 your expert report. Right?		12 for it to read on the claim. Correct?	
13 A Yes.		13 A Generally speaking, yes.	
14 Q Let's scroll down to the last page.		14 Q And that would include the elements of	
15 MR. KREMEN: Excuse me. Debbie or		15 the claim preamble. Right?	
16 whoever, could we zoom in one level so that it		16 A It would.	
17 fills the screen? Because Mr. Haidri has		17 Q So looking at Element A, it recites,	
18 difficulty seeing it. Thank you so much.		18 "Electrostatically attracting the particulate	
19 THE WITNESS: Thank you.		19 matter to the thin film."	
20 MS. PETERSON: Could we go to the last		20 Right?	
21 page of the exhibit, please. Actually, I'm sorry,		21 A That's what it says.	
22 second-to-last page. Yep. And maybe scroll down		22 Q And that's what you referred to in your	
23 a little bit. And then -- okay.		23 report as capturing?	
24 Q Mr. Haidri, do you see Claims 1 and 2		24 A It's a equivalent term, yes.	
25 listed on the screen in front of you?		25 Q Well, you did use the phrase "capturing"	
	58		60
1 A Yes.		1 in your report with respect to Element A of the	
2 Q So I'd like to focus on Claim 1. You'd		2 claims. Right?	
3 agree with me that Claim 1 has a preamble?		3 A Yes.	
4 A A method -- yeah, okay, I see the		4 Q And then Element B recites, "Holding the	
5 preamble.		5 particulate matter in place by adjusting the	
6 Q And then following the preamble of Claim		6 adhesion of the thin film to permit said thin film	
7 1, there are three claim elements. Right? A, B,		7 to stick to the skin or tissue and by adjusting	
8 and C?		8 the cohesion of the formulation to provide	
9 A Yes.		9 adequate impermeability to the thin film."	
10 Q Element -- and looking at the preamble,		10 That's the element that you referred to	
11 it refers to a method for electrostatically		11 in your report as holding. Right?	
12 inhibiting harmful particulate matter from		12 A Yes, it is holding in general.	
13 infecting an individual through nasal inhalation.		13 Q And then the final element of Claim 1 is,	
14 Correct?		14 "Inactivating the particulate matter by adding at	
15 A That's what it says.		15 least one ingredient that would render said	
16 Q And then going on, Wherein a formulation		16 particulate matter harmless."	
17 is applied to skin or tissue of nasal passages of		17 That would be the element you referred to	
18 the individual in a thin film.		18 in your report as killing. Correct?	
19 Correct?		19 A Killing or biocide, yes.	
20 A Yes.		20 MS. PETERSON: Can we scroll down a	
21 Q And it's your understanding that this		21 little bit to look at Claim 2.	
22 language of the preamble is limiting. Right?		22 Q Claim 2 is another independent claim,	
23 A Limiting in what sense? I didn't follow		23 except that it recites a formulation instead of a	
24 you.		24 method. Correct?	
25 Q Is it a claim limitation?		25 A Yes.	

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Transcript of Amirali Y. Haidri, Esquire

16 (61 to 64)

October 28, 2022

	61		63
1 Q	But it requires those same three elements	1 clear from the specification.	
2 of catching, holding, and killing as you described		2 Q	And there's nothing in the '802 patent
3 in your report?		3 specification indicating that any of these	4 formulations were tested to whether they performed
4 A That is correct.		5 the functions recited in the '802 patent claims.	6 Right?
5 Q	Now, do you agree that Claims 1 and 2 do	7 A Again, I repeat my previous answer. You	
6 not recite just a formulation having certain		8 cannot say yes or no. But this is not included in	
7 ingredients?		9 the specification.	
8 A Would I agree with what? I'm not sure		10 Q	So the specification does not include
9 what you mean.		11 anything about any testing of the formulations to	12 determine whether they perform the functions
10 Q	Well, Claims 1 and 2 are not drafted as a	13 recited in the '802 patent claims. Right?	
11 formulation containing a list of ingredients.		14 A There is no such recitation in the	
12 Correct?		15 specification.	
13 A No, no formulations are included.		16 Q	And there is no -- nothing in the '802
14 Q	Rather, the claims are drafted with	17 patent that reports the surface charge of any of	18 the formulations listed in Tables 1 through 10?
15 respect to the catching, holding, and killing		19 A Can you repeat that? I don't understand	
16 functions that you identified. Right?		20 what you mean by "surface charge."	
17 A Only the functions, yes.		21 Q	Is there anything in the '802 patent that
18 MS. PETERSON: Could we zoom that out and		22 reports the testing of any of the formulations	23 listed in the tables to determine whether they
19 move forward a few pages to --		24 exhibit an electrostatic charge?	
20 MR. KREMEN: Go one more page.		25 A It is not mentioned explicitly, but there	
21 MS. PETERSON: -- Page 4 of the PDF?			
22 A/V TECHNICIAN: I'm sorry, Counsel,			
23 which page?			
24 MS. PETERSON: Page 4 of the PDF.			
25 Q	And, Mr. Haidri, you understand that the		
	62		64
1 '802 patent contains ten tables with a list of		1 are compounds here which are known to be cationic.	
2 formulations. Correct?		2 Q	Is there anything in the '802 patent that
3 A Yes.		3 reports the testing of any of the formulations	4 listed in the table to determine whether they
4 Q	And the formulations provided in those	5 exhibit an electrostatic charge when applied to	6 the skin in or around the nose of a human?
5 ten tables contain a number of ingredients listed.		7 MR. KREMEN: Objection to the form of the	
6 Right?		8 question.	
7 A That is correct.		9 A I would ask that that question be	
8 Q	And for many of those ingredients, rather	10 repeated. It's a little too long and convoluted.	
9 than providing a specific amount of the		11 Q	It might help too, if I can get the
10 ingredient, it's provided in terms of a range.		12 entire question stated on the record before anyone	13 else speaks. But I can certainly repeat it.
11 Right?		14 Is there anything in the '802 patent that	
12 A It is correct.		15 reports the testing of any of the formulations	
13 Q	And you understand that there is nothing	16 listed in the tables to determine whether they	
14 in the '802 patent indicating that any of these		17 exhibited an electrostatic charge when applied to	
15 formulations were made. Correctly -- correct?		18 a human nose?	
16 MR. KREMEN: Object to the form of the		19 A There is no such expletive mentioned,	
17 question.		20 yes.	
18 Q	Let me ask that question again. That was	21 Q	Does the '802 patent identify any
19 bad.		22 specific test that someone could use to determine	23 whether a formulation electrostatically inhibits
20 You understand that there is nothing in		24 harmful particulate matter from infecting an	25 individual through nasal inhalation?
21 the '802 patent specifically stating that any of			
22 these formulations were made. Correct?			
23 MR. KREMEN: Objection.			
24 A There is no indication as to whether the,			
25 formulations were made or not made. That is not			

Transcript of Amirali Y. Haidri, Esquire

17 (65 to 68)

October 28, 2022

	65		67
1 A That is a -- that is a general teaching		1 as Exhibit 33.	
2 of the specification, and that's what it's		2 A/V TECHNICIAN: Stand by.	
3 intended for.		3 (Exhibit 33 marked for identification and	
4 Q But does the '802 patent identify any		4 is attached to the transcript.)	
5 type of test or procedure that someone could use		5 MS. PETERSON: Maybe if you could scroll	
6 to determine whether their product		6 down to the bottom of the page so we can look at	
7 electrostatically inhibits harmful particulate		7 the entire first page. Yeah. Okay.	
8 matter from infecting an individual through nasal		8 For the record, Exhibit 33 is a copy of	
9 inhalation?		9 plaintiff's expert report of -- I'm sorry.	
10 A Again, the teaching is there in general,		10 Mr. Haidri's responsive to -- let me start this	
11 but with no specific example.		11 over again. I didn't want to mispronounce your	
12 Q So there's no specific example or		12 name.	
13 explanation of any test that could be used to		13 Q Mr. Haidri, do you recognize Exhibit 33	
14 determine whether something is electrostatically		14 as a copy of your responsive report that you	
15 inhibiting harmful particulate matter from		15 prepared in this matter involving BlueWillow?	
16 infecting an individual through nasal inhalation.		16 A Yeah, the first page, I recognize it.	
17 A No such test is mentioned.		17 Q Thank you.	
18 Q Does the '802 patent mention any test		18 MS. PETERSON: And then let's move to	
19 that can be used to determine whether a product		19 Page 87 of the PDF.	
20 forms a thin film when applied to the skin or		20 Q Mr. Haidri, is that your signature on the	
21 tissue of nasal passages?		21 final page of the report?	
22 A The specification teaches as much.		22 A It is indeed.	
23 Q And your position is that the		23 Q And the report was signed and executed on	
24 specification teaches that the formulations form a		24 August 12, 2022. Correct?	
25 thin film when applied to the skin. Correct?		25 A Yes, correct.	
	66		68
1 A Yes.		1 Q Now, Mr. Haidri, I did not see that you	
2 Q My question is a little bit different.		2 prepared a separate list of materials that you	
3 Does the '802 patent mention any type of		3 reviewed in forming your opinions.	
4 test that can be used to determine whether a		4 Is that correct?	
5 product forms a thin film when applied to the skin		5 A A glossary? No, there's no glossary.	
6 or tissue of nasal passages?		6 Q So would it be fair to say that the	
7 A No test is mentioned.		7 materials and documents and information that you	
8 Q Does the '802 patent mention any type of		8 considered in forming your opinions is all	
9 test that can be used to determine whether the		9 mentioned specifically within the report itself?	
10 thin film electrostatically attracts particulate		10 A Yeah, within its four corners.	
11 matter?		11 MS. PETERSON: Could we go back to Page 2	
12 A No test is mentioned.		12 of the report, which I believe is at Page 10 of	
13 Q Does the '802 patent mention any type of		13 the PDF.	
14 test that can be used to determine whether the		14 Q And here on Page 2 of your report,	
15 thin film holds particulate matter in place?		15 Mr. Haidri, you have a list of your findings and	
16 A No.		16 conclusions. Correct?	
17 Q Does the '802 patent mention any type of		17 A Yes, that's correct.	
18 test that can be used to determine whether the		18 MR. KREMEN: Could you zoom in?	
19 formulation provides adequate impermeability to		19 Mr. Haidri has eyesight problems.	
20 the thin film?		20 THE WITNESS: Thank you.	
21 A No such test is mentioned.		21 A Okay. Go ahead.	
22 MS. PETERSON: Okay. We can take that		22 Q So this list has a list of seven opinions	
23 exhibit down.		23 that you have formed. Correct?	
24 I'd like to mark next a copy of		24 A All seven are not seen here. But, yes,	
25 Mr. Haidri's responsive report. We'll mark this		25 that is correct.	

Transcript of Amirali Y. Haidri, Esquire

18 (69 to 72)

October 28, 2022

<p>1 Q And so specifically the opinions that you 2 formed are that the Amiji report did not make a 3 clear and convincing showing that Claims 1, 2, 6, 4 and 7 are invalid for each of the grounds that are 5 listed in Items 1 through 7. Correct?</p> <p>6 A Yes, that is true.</p> <p>7 MS. PETERSON: Let's take a look at the 8 next page, please.</p> <p>9 Q And here in Section III of your report 10 you have laid out what you have identified as the 11 Relevant Patent Statutes. Correct?</p> <p>12 A That is correct.</p> <p>13 Q And these are the versions of 35 U.S.C. 14 that you applied in forming your opinions. 15 Correct?</p> <p>16 A Yes.</p> <p>17 Q These are the versions of the patent 18 statute known as the AIA version. Correct?</p> <p>19 A That is correct.</p> <p>20 Q So you did not consider the pre-AIA 21 version of 35 U.S.C. when forming your opinions. 22 Correct?</p> <p>23 A Correct. There was no substantial 24 change.</p> <p>25 MS. PETERSON: Let's go to the next page.</p>	69	<p>1 Right?</p> <p>2 A That is correct.</p> <p>3 Q And then in the next sentence you state, 4 "Under a clear and convincing standard, it is a 5 finding of fact that should be overturned only 6 upon a finding that no reasonable examiner would 7 have allowed the claims in light of the considered 8 prior art."</p> <p>9 That's the standard that you applied in 10 forming your opinions with respect to the Wahi 11 patents?</p> <p>12 Is that right?</p> <p>13 A That is right.</p> <p>14 Q I don't see that you've cited any case 15 law or any other authority in support of that 16 standard.</p> <p>17 Where did you obtain that standard from?</p> <p>18 A But it follows underneath, as you can 19 see.</p> <p>20 Q So it's based on the Microsoft Supreme 21 Court decision?</p> <p>22 A If you scroll down you will see more.</p> <p>23 But yes, Microsoft is the beginning.</p> <p>24 Q So that language, "no reasonable examiner 25 would have allowed the claims," you're basing that</p>	71
<p>1 Actually, I'm sorry, let's go to Section IV. So 2 this is going to be Page 6 of your report, Page 14 3 of the PDF.</p> <p>4 Q And here in Section IV, this is the 5 beginning of some sections that contain the legal 6 standards that you applied in forming your 7 opinions. Correct?</p> <p>8 A That is right.</p> <p>9 Q So specifically Section IV has several 10 pages concerning the clear and convincing standard 11 of proof. Right?</p> <p>12 A That is correct.</p> <p>13 MS. PETERSON: And then let's move 14 forward to Page 8 of the report. Yeah, that's 15 good right there.</p> <p>16 Q Now, in the first paragraph on Page 8 of 17 your report, there is a discussion about the Wahi 18 references that were cited during prosecution of 19 the '802 patent. Correct?</p> <p>20 A Yes.</p> <p>21 Q And then looking at the second-to-last 22 sentence of this paragraph, you state that, "These 23 three references must be given special deference 24 because they were considered by the USPTO prior to 25 issuing a Notice of Allowance."</p>	70	<p>1 on the Microsoft case?</p> <p>2 A Literally the words of the Supreme Court, 3 yes.</p> <p>4 Q Now, throughout these sections describing 5 the legal standards that you applied, you 6 contained -- or included a number of citations to 7 the MPEP. Correct?</p> <p>8 A That is right.</p> <p>9 Q And that would be the Manual of Patent 10 Examining Procedure that's used by the U.S. Patent 11 and Trademark Office. Correct?</p> <p>12 A That is correct.</p> <p>13 Q Why did you include citations, and why 14 did you rely on the MPEP in forming your opinions?</p> <p>15 MR. KREMEN: Objection to the form of the 16 question.</p> <p>17 A Well, that is the guide for examiners to 18 follow in issuing patents.</p> <p>19 Q And is that the guide that a court or a 20 jury follows when assessing the validity of a 21 patent in litigation?</p> <p>22 A It is entitled great deference under a 23 case that is not mentioned here, but you will 24 recall the name. It's called the Chevron 25 deference.</p>	72

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Transcript of Amirali Y. Haidri, Esquire

19 (73 to 76)

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	73		75
1 Q	But you understand that the MPEP is not	1 here?	
2 binding on courts. Correct?		2 A	That is the language the PTO uses.
3 A	True enough, except that the Chevron	3 Q	Okay.
4 deference applies, and the findings of an		4 A	Any time a claim is disallowed, they say
5 administrative agency are not likely overturned.		5	claims are rejected.
6 Q	So that would apply -- what you're	6 Q	So that's the term that's used when the
7 referring to as "Chevron deference," that would		7	USPTO determines that an application under
8 apply to the decisions of the examining agency.		8	examination does not satisfy its requirements for
9 Correct?		9	patentability?
10 A	That is correct.	10 A	Broadly speaking, yes.
11 Q	But the specific requirements of the	11	MS. PETERSON: And then let's move
12 MPEP, those are not bound -- or the courts are not		12	forward another several pages to Page 23. Yeah.
13 bound by those. Right?		13	And we can focus there on the bottom.
14 A	They're entitled to deference, but not	14	Here you have a section addressing
15 binding -- but not be binding.		15	secondary considerations, and specifically
16 Q	And throughout these sections on legal	16	commercial success. Correct?
17 standards, do you feel like you have appropriately			
18 cited the applicable legal authority for all of			
19 the standards that you've provided in your report?			
20 A	Well, I'm satisfied that there is the		
21 correct status of the law.			
22 MS. PETERSON:	Let's move forward to Page		
23 9.			
24 Q	And you'll see here in Section V, now we		
25 have a section titled Standards For Inquiry Into			
	74		76
1 Patent Invalidity. Correct?		1 Q	And then if we go to the next page, I see
2 A	Yes.	2	you also have some references to requirements from
3 Q	And your first section is on Section 101?	3	the MPEP as well. Right?
4 A	Yes, correct.	4	A
5 MS. PETERSON:	Let's take a look at the	5	MS. PETERSON: Let's go -- let's scroll
6 next page. If we can focus, maybe go down just a		6	down to the bottom of this page.
7 little bit more. That looks good.		7	Q Section VI, this is a section that you
8 Q	So here for Section 101, you've	8	have prepared addressing the person having
9 identified a two-step analysis. Correct?		9	ordinary skill in the art. Correct?
10 A	Yes.	10 A	That is correct.
11 Q	And I see again you have a section of the	11	MS. PETERSON: Let's go to the next page.
12 MPEP cited, Section 2106. Right?		12 Q	I see you have a case cited at the very
13 A	That is correct.	13	top of this page. And we might need to go back up
14 Q	Are those the PTO guidelines on subject	14	to the page before it.
15 matter eligibility?		15	But this case that you cite that
16 A	That is what I understand.	16	addresses the proposition that, An incorrect
17 Q	And these are the standards that you	17	determination as to level of skill or an incorrect
18 applied in forming your opinions. Correct?		18	finding may constitute reversible error if it
19 A	Yes.	19	influences the ultimate conclusion on obviousness.
20 MS. PETERSON:	Okay. Let's move forward	20	Is that right?
21 to Page 19 of the report. I think it's at Page 27		21 A	I see only that sentence, but ...
22 of the PDF. Yeah.		22 Q	But you see on the next page, there's a
23 Q	Here you have a Section D titled	23	case citation to Custom Accessories?
24 Rejections Based on Prior Art.		24 A	Let me read this, please.
25 Why did you use the word "rejections"		25 Q	Yeah. Sure. Take your time.

Transcript of Amirali Y. Haidri, Esquire

October 28, 2022

20 (77 to 80)

<p>1 MR. KREMEN: Do you want to read above 2 that?</p> <p>3 THE WITNESS: That's what I meant, is 4 being given to me all the text.</p> <p>5 Q Yeah, if you need to move up and down, 6 just let us know, we can do that.</p> <p>7 A Okay. Now we are fine. So let me read 8 this. Because I didn't want to answer your 9 question out of context.</p> <p>10 Q Sure.</p> <p>11 A All right. Very good. Please.</p> <p>12 Q So --</p> <p>13 A Please repeat your question now.</p> <p>14 Q Sure. So the key citation to custom 15 accessories, that's with respect to the statement 16 that immediately precedes it about an incorrect 17 determination as to the level of skill. Correct?</p> <p>18 A That is correct, yes.</p> <p>19 MS. PETERSON: So I'd like to go down a 20 little bit farther onto the next page. And, 21 actually, can you -- yeah. Still at the top of 22 the page, please. Yeah. That's great.</p> <p>23 A Okay.</p> <p>24 Q So the case -- or, sorry, the next 25 sentence here at the top of Page 25 says, "Care</p>	77	<p>1 Q So that's your understanding of how the 2 level of skill of a person of ordinary skill in 3 the art should be set?</p> <p>4 A Yes, it is my understanding, and I 5 believe it's generally the case.</p> <p>6 Q So a person of ordinary skill is going to 7 be someone who can necessarily make and use the 8 claimed invention without undue experimentation.</p> <p>9 A Yes, correct.</p> <p>10 Q And that's based on the language of 35 11 U.S.C. 112?</p> <p>12 A 112 does not use the word "ordinary 13 skill," just "personal skill in the art." But 14 that is the usual understanding of the patent bar 15 of the judiciary.</p> <p>16 Q Could somebody be a person skilled in the 17 art but still be unable to make the claimed 18 invention without undue experimentation?</p> <p>19 MR. KREMEN: Objection to the form of the 20 question.</p> <p>21 A Again, there will be no straightforward 22 answer to your question. One or two individuals 23 may not be able to, but generally a person of 24 skill in the art should be able to.</p> <p>25 Q But you agree that there may be</p>	79
<p>1 must be taken not to select a person of 2 extraordinary skill."</p> <p>3 I don't see any case citation here.</p> <p>4 What is that based on?</p> <p>5 A It's based on a general practice in 6 various judicial opinions about a person of 7 ordinary skill in the art. Explicitly mentioned 8 in Section 103 and implicitly in Section 112. So, 9 anyway, that's where you can form that kind of an 10 opinion with reasonable support in the statute and 11 case law.</p> <p>12 Q And what cases use that language, 13 "extraordinary skill"?</p> <p>14 A Well, there aren't any that I know of.</p> <p>15 Q Let's scroll down. If we could look at 16 the -- actually, you don't need to scroll down. 17 But I'd like to look at the next paragraph right 18 here on the screen.</p> <p>19 Towards the bottom of that paragraph you 20 state that, According to 112, he is the person who 21 is able to make and use the claimed invention at 22 the earliest filing date without undue 23 experimentation.</p> <p>24 Do you see that?</p> <p>25 A Yes, I do.</p>	78	<p>1 circumstances where a person skilled in the art is 2 not actually able to make and use the claimed 3 invention without undue experimentation. Correct?</p> <p>4 MR. KREMEN: Objection to the form of the 5 question.</p> <p>6 A Such a person would exist, I'm sure, 7 statistically speaking, but that would be the 8 exception, not the rule.</p> <p>9 Q Well, would you agree with me that if the 10 person skilled in the art is necessarily always 11 able to make and use the claimed invention without 12 undue experimentation, then we would never have 13 any courts or juries finding patents invalid for 14 lack of enablement?</p> <p>15 MR. KREMEN: Objection to form.</p> <p>16 A Once again, I don't understand the 17 question. You have to repeat that slowly.</p> <p>18 Q That's okay, I can skip it.</p> <p>19 MS. PETERSON: Okay. Let's move ahead to 20 Page 27. Actually, no, Page 26. And scroll down 21 a little bit to the bottom.</p> <p>22 Q This Section B titled The Level of 23 Ordinary Skill, this contains your opinions 24 regarding the level of ordinary skill in the art.</p> <p>25 Correct?</p>	80

Transcript of Amirali Y. Haidri, Esquire

21 (81 to 84)

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	81		83
1	A Correct.	1	there's an adhesive film, and benzalkonium chloride also functions as a biocide.
2	Q Did you discuss your understanding of the	2	Q And is the actual formulation of
3	level of ordinary skill in the art with Dr. Lemmo	3	NasalGuard -- which example -- sorry. Let me
4	while you were formulating your opinion?	4	start over again.
5	A No, I did not consult Dr. Lemmo.	5	Which of the ten tables in the '802
6	Q And did Dr. Lemmo consult you at any	6	patent contains the formulation of NasalGuard, do
7	point in time about the level of ordinary skill in	7	you know?
8	the art as it applies to the '802 patent?	8	
9	A No, not in the context of this	9	A One of them does. I can't say which one.
10	litigation.	10	Q And does the '802 patent identify the
11	Q Did Dr. Lemmo consult you at any point in	11	exact percentage of the ingredients in NasalGuard?
12	time, for example in the Matrixx litigation, about	12	A Every one of this table provides ranges.
13	the level of ordinary skill in the art?	13	None of them is an exact percentage of the active
14	A Yeah, that possibly happened, but I don't	14	ingredients.
15	recall that.	15	Q So none of the tables in the '802 patent
16	Q Okay.	16	specifically identify the precise percentages of
17	MS. PETERSON: I'm at a good breaking	17	the ingredients of NasalGuard. Correct?
18	point. How about we go off the record now.	18	A No, not an exact percentage. It's always
19	THE WITNESS: Thank you. I was going to	19	a range.
20	ask --	20	Q And how do you know that the ingredients
21	VIDEO SPECIALIST: We are going off the	21	of NasalGuard are listed in one of the ten tables?
22	record. The time is now 12:28 p.m.	22	A I don't know that explicitly, but I've
23	(A recess was taken.)	23	been told that the product being currently
24	VIDEO SPECIALIST: We're back on the	24	marketed does follow one of the examples.
25	record. The time is now 1:31 p.m.	25	Q And who were you told that by?
	82		84
1	BY MS. PETERSON:	1	A Mr. Kremen.
2	Q Mr. Haidri, did you have any	2	Q I'd like to move forward in your report
3	conversations with anyone during any of the breaks	3	to Page 49. That's fine right there.
4	of today's deposition about the substance of your	4	So starting on Page 49 of your report,
5	testimony?	5	you have a section addressing written description.
6	A No, I did not.	6	Correct?
7	Q Okay. Thank you.	7	A Enablement, yes.
8	MS. PETERSON: Let's go back to Mr.	8	Q But I'm talking about this particular
9	Haidri's expert report, Exhibit 33. And I'd like	9	section.
10	to go to Page 45 of the PDF. And if you could	10	Is this Section D shown on Page 49
11	scroll down to the last paragraph, please. Great.	11	related to written description?
12	Q Mr. Haidri, in the last paragraph on Page	12	A Yes. I see that.
13	37 of your report I see you refer to a Trutek	13	MS. PETERSON: And then let's move, let's
14	product that was initially named NasalGuard MAPB.	14	scroll through this section until we get to Page
15	Do you see that?	15	51. And if we go down, yeah, to look at that
16	A Yes.	16	paragraph right there, that's great.
17	Q And you state it was formulated based	17	Q So in the second paragraph of Page 51, do
18	upon the example formulations shown in the	18	you provide here in this paragraph an explanation
19	specification of the '802 patent. Correct?	19	of the applicable legal standard for written
20	A Yes, that is right.	20	description?
21	Q What is the formulation of NasalGuard, do	21	A Let me read that.
22	you know?	22	All right. Go ahead.
23	A Basically it contains the ingredients	23	Q So on Page 51 of your report, you set out
24	mentioned in the ten examples of the '802 patent.	24	the legal standard that you applied for written
25	Most importantly, there's benzalkonium chloride,	25	description stating that the written description

Transcript of Amirali Y. Haidri, Esquire

October 28, 2022

22 (85 to 88)

	85		87
1 requirement of 35 U.S.C. Section 112 (A) is that 2 it must be complete enough as to enable a person 3 of ordinary skill to make and use the invention. 4 Correct?		1 Q So, Mr. Haidri, do you recognize Exhibit 2 34 as a copy of the clinical study report that you 3 attached to your expert report as Exhibit D?	
5 A Yes.		4 A Yes, I do.	
6 Q And then you go on to say, "It does not 7 need to teach the prior art to those who are 8 unfamiliar with it."		5 MS. PETERSON: And if we could go back up 6 to the second page of the report. One more page, 7 then. There we go.	
9 Correct?		8 Q So on Page 3 of the clinical study 9 report, do you see there is an objective of the 10 study that is provided?	
10 A That is correct.		11 A Yes.	
11 Q And so that's the standard that you 12 applied in your written description analysis?		12 Q And the primary objective of the study 13 was to evaluate the efficacy of MAPB nasal 14 application gel in the prevention of the common 15 cold and/or flu. Correct?	
13 A Yes.		16 A That's what it says.	
14 Q And then you go on to refer to a clinical 15 study that you attached as Exhibit D to your 16 report. Correct?		17 MS. PETERSON: And then if we could go to 18 the next page?	
17 A Yes.		19 Q And up here at the top you see there is a 20 reference to Primary Endpoint?	
18 Q And did you rely on that clinical study 19 report attached as Exhibit D as evidence of 20 written description?		21 MR. KREMEN: Where is that?	
21 A Yes, you can say that.		22 A Yes.	
22 Q Now, nothing from that clinical study was 23 described in the '802 patent. Correct?		23 MR. KREMEN: I don't see it.	
24 A Yes.		24 THE WITNESS: It is the second box -- or	
25 Q So yes, you agree with me that the '802		25 the fourth.	
	86		88
1 patent does not contain any reference or any 2 information from that clinical study. Right?		1 MR. KREMEN: Oh, okay. Got it.	
3 A I agree.		2 Q So the primary endpoint of this study was 3 the percentage of subjects that were cold and/or 4 flu-free in the treatment group at the end of the 5 study as compared to the subjects who were cold 6 and/or flu-free in the no-treatment group.	
4 MS. PETERSON: Let's take this exhibit 5 down. And I'd like to mark that clinical study 6 report now. We'll mark that as Exhibit 34.		7 Correct?	
7 A/V TECHNICIAN: Stand by.		8 A Yes.	
8 (Exhibit 34 marked for identification and 9 is attached to the transcript.)		9 Q Would you agree with me that that 10 endpoint that's provided here in the clinical 11 study report, that's a subjective determination?	
10 MR. KREMEN: What exhibit is that to his 11 report?		12 A Subjective, can't quite agree. But, all 13 right. Overall, yes.	
12 MS. PETERSON: Exhibit D, as in dog.		14 Q Now, the clinical study only assessed 15 whether the subjects had either the common cold or 16 the flu at the end of the study. Right?	
13 MR. KREMEN: Thank you.		17 A Yes.	
14 Q Okay. Mr. Haidri, do you recognize 15 Exhibit 34 as a copy of the clinical study report 16 that you had attached to your expert report as 17 Exhibit D?		18 Q The study did not evaluate the use of 19 MAPB in any infections related to any other 20 diseases. Correct?	
18 A That is the first page.		21 I'm sorry, did you respond?	
19 Q Okay. And we can scroll through it if 20 you need to confirm the rest of the pages that you 21 attached.		22 A I said "correct."	
22 Would you like us to do that?		23 Q And is it also your opinion that this 24 clinical study demonstrated that the ten 25 formulations listed in the '802 patent work?	
23 A Yes, please. Okay.			
24 MS. PETERSON: Can you scroll down 25 through to the end, please.			

Transcript of Amirali Y. Haidri, Esquire

23 (89 to 92)

October 28, 2022

	89		91
1 A It does show that, yes.		1 report down. And let's go back to Mr. Haidri's	
2 Q Now, would you agree that the clinical		2 expert report, Exhibit 33.	
3 study that we're looking at, it did not test		3 And let me get you a page number.	
4 whether NasalGuard electrostatically inhibits		4 I'd like to go to Page 78 of his report,	
5 harmful particulate matter from infecting an		5 which is maybe Page 86 of the document, 86 of the	
6 individual?		6 PDF. And if you could scroll down a little bit.	
7 MR. KREMEN: Objection to form.		7 That looks good.	
8 A I did not quite follow this question.		8 Q In the second paragraph on Page 78 of	
9 Where does electrostatic infection come in?		9 your report you state that, Since 2012,	
10 Q Well, that's what I'm wondering.		10 approximately 7 million tubes of the '802 patented	
11 Did the clinical study test anything		11 products have been sold worldwide.	
12 about the electrostatic attraction or		12 Do you see that sentence?	
13 electrostatic inhibition of NasalGuard?		13 A Yes.	
14 A I don't think it's mentioned by name.		14 Q What products specifically are you	
15 Q Did the clinical study test whether		15 referring to?	
16 NasalGuard forms a thin film when applied to the		16 A The NasalGuard product.	
17 skin or tissue of nasal passages?		17 Q So that 7 million tubes refers to sales	
18 A Is that a complete question? Can you		18 of all NasalGuard products?	
19 please repeat that?		19 A I will think so, or say so.	
20 Q Is there anything in the clinical study		20 Q And where did you obtain that 7 million	
21 report indicating that the investigators tested		21 number from?	
22 whether NasalGuard forms a thin film when applied		22 A From Mr. Kremen.	
23 to the skin or tissue of nasal passages?		23 Q And if you could look a few sentences	
24 A No, no such thing is mentioned.		24 down in that same paragraph, do you see a sentence	
25 Q Is there anything in the clinical study		25 that starts with the word "satisfaction"?	
	90		92
1 report indicating that the investigators tested		1 A Yes.	
2 whether a thin film electrostatically attracts		2 Q So you state in your report that,	
3 particulate matter?		3 "Satisfaction is necessarily based on the ability	
4 A It could have done, but the investigators		4 of the product to inhibit harmful particles from	
5 don't say so.		5 infecting the purchaser through nasal inhalation."	
6 Q So you don't see anything along those		6 Correct?	
7 lines mentioned in the report. Correct?		7 A Yes.	
8 A Not mentioned by name or explicitly.		8 Q What did you do to analyze whether	
9 Q Is there anything in the clinical study		9 purchasers' satisfaction with NasalGuard was the	
10 report indicating that the investigators tested		10 result of the ability of the product to inhibit	
11 whether a thin film holds the particulate matter		11 harmful particles from infecting the purchaser	
12 in place?		12 through nasal inhalation?	
13 A No. Subject to my qualification, the		13 A From the large number of sales, which	
14 answer is no.		14 also implies repeat sales, repeat use by	
15 Q So there's no express reference to		15 consumers, and the absence of any complaints.	
16 whether the investigators tested whether a thin		16 Q Did you consider whether any customer	
17 film holds the particulate matter in place?		17 satisfaction could be attributed to some other	
18 A Agreed.		18 feature of the product?	
19 Q So in other words, the clinical study		19 A No consumer dissatisfaction has been	
20 report showed that fewer people in the treatment		20 brought to my attention.	
21 group had the cold or flu at the end of the study,		21 Q No. I was asking you something a little	
22 but there's no discussion of why that was the		22 bit different. Did you consider whether that	
23 case.		23 customer satisfaction you're referring to, whether	
24 A No discussion, that is right.		24 it could be attributed to some other feature of	
25 MS. PETERSON: Okay. We can take that		25 NasalGuard?	

